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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/461,684	12/14/1999	REINER LAUS	7636-0020.30	4142

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EXAMINER

DIBRINO, MARIANNE NMN

ART UNIT	PAPER NUMBER
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1644

DATE MAILED: 08/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Interview Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/461,684	LAUS ET AL	
	<b>Examiner</b>	<b>Art Unit</b>	
	DiBrino Marianne	1644	

All participants (applicant, applicant's representative, PTO personnel):

(1) DiBrino, Marianne. (3)\_\_\_\_\_.

(2) Freschi, Gina. (4)\_\_\_\_\_.

Date of Interview: 6/5-6/6/06.

Type: a) ☒ Telephonic b) ☐ Video Conference  
c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.  
If Yes, brief description: \_\_\_\_\_.

Claim(s) discussed: \_\_\_\_\_.

Identification of prior art discussed: \_\_\_\_\_.

Agreement with respect to the claims f) ☐ was reached. g) ☒ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.



Examiner's signature, if required

## Summary of Record of Interview Requirements

### Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

### Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews

#### Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

#### 37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,  
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

### Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Ms. Freschi called on 6/5/06 PM asking for an interview prior to 6/8/06 on which date the issue fee would be due. She said that the Applicant was considering filing a petition to withdraw the application from issue based upon the belief that a search of the allowed product comprising a soluble protein antigen modified by chemical linkage or fusion to an added peptidic sequence consisting of SEQ ID NO: 4 would be coextensive with that consisting of SEQ ID NO: 2, and based upon rejoinder of nonelected method claims (said method claims canceled 7/2/01). The Examiner indicated that there wasn't time for an in depth interview before the issue fee due date, that a search of SEQ ID NO: 4 is not coextensive with a search of SEQ ID NO: 2, and reminded her that Applicant amended the claims to delete all SEQ ID NO except SEQ ID NO: 4 in the amendment accompanying the request for RCE filed 12/23/05 (the claims previously recited SEQ ID NO: 1-9 and art was applied against the elected species SEQ ID NO: 6 in the final rejection mailed 7/26/05). The Examiner also indicated that the method claims needed to be of the same scope as the allowed claims and there might be 112, first paragraph written description and enablement issues. Ms. Freschi sent a petition to withdraw the application from issue to the Examiner's computer on 6/5/06 at 10:24 PM, which the Examiner viewed on 6/6/06. The Examiner called Ms. Freschi to tell her she needed to fax the petition to the official fax number and reminded Ms. Freschi that an amendment needed to be filed with method claims commensurate in scope to the allowed product claims or the petition would be denied outright because there were no method claims pending for rejoinder. The Examiner further indicated that Mr. William Dixon, SPRE, recommended that they pay the issue fee and pursue method claims as well as other SEQ ID NO in a continuing application due to shortened patent term that would apply if the case was subsequently allowed, and that the USPTO had met its obligation since said obligation does not include rejoinder of canceled method claims. Ms. Freschi questioned the latter, and the Examiner explained that the situation is different with pending/withdrawn claims. Ms. Freschi indicated that she would file an amendment with method claims amended to be commensurate in scope with the allowed product claims. Ms. Freschi also indicated that the Applicant wished to pursue a peptide that was SEQ ID NO: 4, but with the 20 carboxy terminal Lysine residues substituted with Arginine residues. The Examiner reminded Ms. Freschi that there might be 112, first paragraph issues with the method claims, such as with treating cancer. Agreement was not reached that Applicant would reopen prosecution. Ms. Freschi later called back to inform the Examiner that her client wanted to proceed with withdrawing the application from issue not withstanding Mr. Dixon's recommendation. The Examiner notes that the amendment filed 6/6/06 (after Applicant filed the Petition to Withdraw from Issue) contains product claims that recite various fully defined sequences or a generic formula peptide sequence, and they also recite SEQ ID NO: 6, the elected species against which an art rejection had been applied during prosecution, method claims that are not commensurate in scope with the allowed product claims and that use a different product, as well as claims drawn to a therapeutic composition comprising a product different from the product of the allowed claims. The Examiner further notes with regard to a search of SEQ ID NO: 4 not being coextensive with a search of SEQ ID NO: 2, that SEQ ID NO: 4 was searched under standard search parameters using the Smith-Waterman Algorithm that is based upon % query match. When such search is performed on the larger sequence SEQ ID NO: 4, and there is a disparity in length such as with the fragment of SEQ ID NO: 4 that is SEQ ID NO: 2, there is no guarantee that the search of SEQ ID NO: 4 will reveal a hit on SEQ ID NO: 2. The search results for a search of SEQ ID NO: 4 depend upon length of the search query sequence, its amino acid sequence, and in particular, the amino acid sequence of the portion of SEQ ID NO: 4 that is non-identical with SEQ ID NO: 2, and the identity and number of database peptides or proteins that are best % matches to SEQ ID NO: 4.